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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT SEATTLE

11                  BENJAMIN K. NG,

12                  Petitioner,

13                  v.

14                  SCOTT SPEER,

15                  Respondent.

16                  CASE NO. C25-25 JNW

17                  ORDER ADOPTING REPORT AND  
18                  RECOMMENDATION AND  
19                  OVERRULING OBJECTIONS

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21                  This matter comes before the Court on Petitioner's Objections to the Report and  
22                  Recommendation of Magistrate Judge S. Kate Vaughan. (Dkt. No. 5.) Having reviewed the  
23                  Objections, the Report and Recommendation (R&R) (Dkt. No. 4), and all supporting materials,  
24                  the Court ADOPTS the R&R and OVERRULES the Objections.

25                  **BACKGROUND**

26                  Petitioner Benjamin Ng is a state prisoner who is currently confined at the Stafford Creek  
27                  Corrections Center in Aberdeen, Washington, as the result of a criminal conviction from the  
28                  1980s. (See Dkt. 1-1 at 1.) Ng seeks relief from that judgment on the ground that he was denied

1 counsel at a critical stage of his criminal proceedings, specifically, his arraignment. (See id. at 6.)  
 2 Though Ng filed his petition for writ of habeas corpus under 28 U.S.C. § 2241, the R&R  
 3 construed it as a habeas petition under 28 U.S.C. § 2254, noting that ““§ 2254 is the exclusive  
 4 vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment[.]””  
 5 (R&R at 2 (quoting White v. Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004), overruled on  
 6 other grounds by Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc)). The R&R then  
 7 noted that Ng filed a federal habeas petition challenging this same sentence in May 2024, which  
 8 led to its dismissal with prejudice because it was untimely and time-barred. (R&R at 2 (citing Ng  
 9 v. Bennett, C24-717 JHC, Dkt. Nos. 4, 6, 14).) The R&R found that it lacked jurisdiction over  
 10 Ng’s second petition because it an improper successive petition that must be dismissed under 28  
 11 U.S.C. § 2244(b). (Id. (“The fact that Petitioner’s initial federal habeas petition was dismissed as  
 12 time-barred renders the instant petition a second or successive one for purposes of 28 U.S.C. §  
 13 2244(b).”).)

14 Ng has filed objections, which the Court addresses below.

## 15 ANALYSIS

### 16 A. Legal Standard

17 Under Federal Rule of Civil Procedure 72, the Court must resolve de novo any part of the  
 18 Magistrate Judge’s Report and Recommendation that has been properly objected to and may  
 19 accept, reject, or modify the recommended disposition. Fed. R. Civ. P. 72(b)(3); see also 28  
 20 U.S.C. § 636(b)(1).

### 21 B. No Errors in R&R

22 Ng first argues that the R&R failed to engage in a “successive analysis pursuant to 28  
 23 U.S.C. § 2244(b)[.]” (Objn’s at 1.) This objection appears to ignore the fact that the R&R did, in  
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1 fact, determine Ng's petition is a successive petition challenging the same sentence, where the  
 2 prior petition was dismissed as time barred. The Court finds no failure to consider 28 U.S.C. §  
 3 2244(b), and Ng has not identified any grounds to avoid the successive-petition bar set out in §  
 4 2244(b)(2).

5 Second, Ng faults the R&R for not determining the merits of his habeas claim. (Obj'ns at  
 6 1.) But because the R&R properly determined the Court lacks subject matter jurisdiction over  
 7 this successive petition under § 2244(b), the R&R correctly did not reach the merits of the  
 8 underlying time-barred claim.

9 Third, Ng claims the R&R did not undertake a “jurisdiction analysis.” (Obj'ns at 1.) But  
 10 the R&R did engage in a jurisdictional analysis, correctly finding that the Court lacks subject  
 11 matter jurisdiction. None of the cases Ng cites to alters this conclusion.

12 Fourth, Ng claims the R&R incorrectly characterized his petition as a § 2254 petition, not  
 13 a § 2241 petition. (Obj'ns at 2.) But the R&R correctly held that “‘§ 2254 is the exclusive vehicle  
 14 for a habeas petition by a state prisoner in custody pursuant to a state court judgment[.]’” (R&R  
 15 at 2 (quoting White v. Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004), overruled on other  
 16 grounds by Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc)).

17 Fifth, Ng argues the R&R violated 28 U.S.C. § 2243 by not commanding an answer.  
 18 (Obj'ns at 2.) But having determined that the Court lacks subject matter jurisdiction over this  
 19 successive petition, the R&R correctly declined to order an answer.

20 Sixth, Ng argues the R&R “asserts a factual predicate in violation of 28 U.S.C. §  
 21 2244(b)(2)(B)(i).” (Obj'ns at 2.) This argument appears to misconstrue the R&R and the  
 22 requirements of § 2244(b)(2)(B)(i). Under the statute, Ng bears the burden of demonstrating why  
 23 his successive petition includes a factual predicate that “could not have been discovered

1 previously through the exercise of due diligence.” 28 U.S.C. § 2244(b)(2)(B)(i). The Court has  
2 separately reviewed the materials filed in this matter and it finds no information that would  
3 satisfy Ng’s burden of showing some new factual predicate that he could not have earlier  
4 discovered. The objection thus lacks merit.

5 The Court therefore OVERRULES the Objections, none of which has merit.

6 **CONCLUSION**

7 The R&R correctly determined that Ng’s petition is barred by § 2244(b) as a successive  
8 petition. Ng has failed to identify any errors in the R&R. And the Court agrees with the R&R’s  
9 determination that a certificate of appealability should not issue, as reasonable jurists could not  
10 disagree on the resolution of the claims and the claims do not deserve encouragement to proceed  
11 further. The Court therefore: (1) ADOPTS the R&R and DISMISSES this action with prejudice;  
12 (2) OVERRULES the Objections; and (3) DENIES issuance of a certificate of appealability.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated April 4, 2025.

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16 Marsha J. Pechman  
United States Senior District Judge  
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